IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9291 of 2002

with

SPECIAL CIVIL APPLICATION No 10359 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BHAGWANBHAI KARAMANBHAI BHARVAD

Versus

AROGYANAGAR CO.OP.HOUSING SOCIETY LTD.

Appearance:

1. Special Civil Application No. 9291 of 2002
   MR SB VAKIL SR COUNSEL WITH
   MR ASPI M KAPADIA for Petitioner No. 1
   MR MC BHATT SR. COUNSEL WITH
   MR SHITAL R PATEL for Respondent No. 1
   MR YOGESH S LAKHANI for Respondent No. 2-8
2. Special Civil Application No. 10359 of 2002
   MR YOGESH S LAKHANI for Petitioner No. 1
   MR MIHIR THAKORE SR. COUNSEL

WITH MR SHITAL R PATEL for Respondent No. 1

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 06/21-02-2003

COMMON ORAL JUDGEMENT

1. Rule. Heard the learned counsel for the parties. Both these petitions are filed against the judgment and order dated 30-8-2002 passed by the Fourth Extra Assistant Judge, Ahmedabad (Rural), Navrangpura in Misc. Civil Appeals No. 95 of 2001 and 96 of 2001. As both these petitions are arising out of the same judgment and order of the trial Court, these petitions are disposed of by common judgment.

2. The plaintiff filed Regular Civil Suit No. 513 of 1999 for declaration and permanent injunction along with the application exh. 5 for interim injunction. The defendants also filed an application exh. 51 for vacating ex-parte interim order, wherein both the parties were directed to maintain status-quo vide order dated 23-11-2001 by the trial Court. Initially, the ex-parte order was passed by the trial Court but subsequently after hearing both the parties to the aforesaid suit, the final order of status-quo was passed allowing the application exh. 5 and confirmed the ex-parte interim order and rejected the application exh. 51 of the defendants. Against the said common judgment and order dated 23-11-2001 passed in the aforesaid civil suit, the plaintiff also filed Civil Misc. Appeal No. 96 of 2001 and the defendant No. 6 filed Civil Misc. Appeal No.95 of 2001. Civil Misc. Appeal No. 96 of 2001 filed by the plaintiff was allowed and Civil Misc. Apeal No. 95 of 2001 of the deefndant no. 6 was dismissed by the 4th Extra Assistant Judge, Ahmedabad (Rural) vide his common judgment and order dated 30-8-2002. As such, the defndants being aggrieved and dissatisfied by the common judgment and order dated 30-8-2002 passed Regular Civil Suit No. 513 of 1999, the defendant no. 6 filed Special Civil Application No. 9291 of 2002 and the defendants no. 1 and 3 to 5 and heirs and legal representatives of the original defendant no. 2 filed Special Civil Application No. 10359 of 2002.

3. The brief facts of the case are that the defendants no. 1 to 5 were original owners of the land bearing Survey No. 864 admeasuring 19602 sq. mtrs. situated in the sim of village Vejalpur, District, Sub

District Ahmedabad and they decided to sell the said land and hence they executed "banakhat" (agreement to sell) in favour of the plaintiff - the Arogyanagar Cooperative Housing Society Ltd. after receiving the entire consideration of Rs.7,84,080-00 by cheque and in cash on 2-3-1993. On the same day, they executed other document i.e. a notarized supplementary agreement for possession in favour of the plaintiff society. Irrevocable Specific power of attorney was also executed by the defendants no. 1 to 5 in favour of one Jayantibhai C. Patel. They have also executed notarized indemnity bond and notarized "Sogadhnama" (affidavit). On behalf of the defendants no. 1 to 5 the power of attorney holder executed five separate sale deeds on 8-4-1999 in favour of the plaintiff - society. Those separate five sale deeds were produced before the Sub-Registrar, for registration on 17-7-1999. As the plaintiff was not an agriculturist, permission for transfer of an agricultural land to a person not an agriculturist was required. The permission of transfer of the land in question u/s 63 of the Bombay Tenancy and Agricultural Lands Act, 1948 was granted by the Collector concerned on 24-7-1999. Therefore, aforesaid five sale deeds were registered on 3-8-1999 by the Sub-Registrar and thereafter the mutation entries were also effected on 18-12-1999 in the record of rights i.e. village form no. 7-12 and other revenue records, and those entries were certified by Mamlatdar on 1-2-2000. It shows that the defendants no. 1, 3, 4 and 5 have also executed registered sale deeds on 26-12-1997 in favour of the defendants no. 6 as well as notarized power of attorney in favour of Amrutbhai and notarized supplementary agreement for possession was also executed on the same day. The sale deeds were also executed by the defendants no. 1, 3, 4 and 5 in favour of the defendant no. 6 by the power of attorney holder on 24-5-1999. Mutation entries were also made on 31-5-1999 in the record of rights of village Vejalpur Panchayat. The Mamlatdar cancelled the mutation entry on 24-1-2000 against which an objection was raised and appeal was filed by one Bharwad against the order of the Mamlatdar. The Dy. Collector dismissed the appeal vide order dated 22-2-2001. Thereafter, Revision Application was filed by Bhagwanbhai Bharwad before the Gujarat Revenue Tribunal which was also rejected on 8-10-2002, as per the statement of the learned counsel for the plaintiff. The Court Commissioner was appointed and his report dated 20-7-2001 shows the construction of the plaintiff on the disputed land.

4. In the present case, the following question arise:

A. The first question is regarding maintainability of the writ petition against the interlocutory order for interim injunction passed in Civil Misc. Appeal by the District Court and the scope of jurisdiction under Article 227 of the Constitution of India.

As invalid deeds of conveyance were not declared by any court of law or by any competent authority, they will be treated as valid more so the permission has been granted by the Collector concerned u/s 63 of the Tenancy Act for transfer of the property to a person who was not an agriculturist i.e. the plaintiff society. From the facts and circumstances of this case, the sale deeds executed in favour of the plaintiff society by Jayantibhai C. Patel power of attorney holder on behalf of the original land owners - i.e. defendants no .1 to 5 will operate from the date of execution of the sale deeds and not from the date of registration.

The learned counsel for the petitioner at the out set contended that the sale deeds executed in favour of the plaintiff society by the power of attorney holder on behalf of the land owners are antedated and cannot be relied and the court below has committed manifest error in relying the sale deeds executed by the power of attorney holder on behalf of the land owners which are antedated.

Learned counsel for the petitioner referred to the date of execution of the sale deeds 8-4-1999 in favour of the plaintiff society by the power of attorney holder Jayantibhai C. Patel and those sale deeds were presented for registration in the office of the Sub-Registrar, Ahmedabad on 17-7-1999 after about three months. There was no need for keeping the sale deeds in their possession for about three months. They could have been presented before the Sub-Registrar, Ahmedabad for registration on the very next date of the execution. Non-presentation of those sale deeds before the Sub-Registrar, Ahmedabad for about three months, will raise an adverse inference that those sale deeds were executed antedated in order to make them operative and effective from the date of the execution, as the sale deeds were executed in favour of the defendant no. 6 by the power of attorney holder on 24-5-1999. I have considered the contention of the learned counsel for the petitioner but he could not convince this Court to hold that the sale deeds executed by the power of attorney holder in favour of the plaintiff society were antedated in absence of any material on record to show otherwise.

Moreso delay in presenting sale deeds before the Sub-Registrar is not sufficient to draw adverse inference for holding that the sale deeds are antedated. Thus, the contention of the learned counsel for the petitioner in this respect is not tenable at all.

The learned counsel for the petitioner/defendant no. 6 contended that this Court has wide power and jurisdiction under Article 227 of the Constitution to entertain a writ petition against an order passed by the Court below or Lower Appellate Court wherein the order is erroneous, illegal, invalid, against the law and not sustainable in the eye of law, even an appeal lies against the order of lower court and appeal is not adequate and efficacious and expeditious remedy this Court can entertain writ petition. Learned counsel for the petitioner relied on the following decisions of the Apex Court and this Court.

(i) In the case of Ram And Shyam Company V. State of Haryana and others reported in 1985 (3) SCC 267, wherein it is held as under :

> "The rule which requires the exhaustion of alternative remedies is a rule of convenience and discretion, a self-imposed restraint on the court, rather than a rule of law. it does not oust the jurisdiction of the Court. Where the order complained against is alleged to be illegal or invalid as being contrary to law, a petition at the instance of person adversely affected by it, would lie to the High Court under Article 226 and such a petition cannot be rejected on the ground that an appeal lies to the higher officer or the State Government . An appeal in all cases cannot be said to provide in all situations an alternative effective remedy keeping aside the nice distinction between jurisdiction and merits."

(ii) In the case of Board of Trustees, Kandla Port Trust V. Mulraj Ashokkumar Mathreja reported in 1986(1) G.L.R. 442, it has been held as under :

> "Amplitude of power under Article 227 of the Constitution of India is very wide. It would depend upon the facts and circumstances of each case and the question whether the Court should exercise this power even when an appeal or a revision is maintainable and even at the interim

stage of a proceeding pending before the lower Court, will be determined mainly on the basis of the facts and circumstances of the case.

It is clear that in the instant case the respondent-plaintiff has, by obtaining interim order from the Court of Civil Judge (J.D.), Gandhidham-Kutch abused the process of the Court. There is irregularity entertaining the suit and this irregularity touches upon the jurisdiction of the Court itself. The Trial Court has conducted the proceedings before it in a manner which is contrary to the accepted rules of procedure and it certainly offends the Court's sense of fair play and justice. In such a situation it becomes an imperative duty of the High Court to exercise its power under Article 227 of the Constitution of India and interfere with the interim order passed by the Trial Court. If this is not done, immense harm and injury will be caused to the cause of justice which cannot be permitted to be perpetuated on the ground that the interim order passed by the Trial Court could have been challenged by way of appeal and/or revision."

(iii) In the decision in the case of Baby V. Trancorer Devaswom Board and others reported in 1998 (8) SCC 310, the Supreme Court has held as under :

"The High Court had still powers under Article 227 of the Constitution of India to quash the orders passed by the tribunals if the findings of fact had been arrived at by non-consideration of the relevant and material documents the consideration of which could have led to an opposite conclusion. This power of the High Court under the Constitution of India is always in addition to the powers of revision under Section 103 of the Act. In that view of the matter, the High Court rightly set aside the orders of the tribunals."

(iv) In the decision of this Court in the case of Sizerali Mohamedali Lodhia V. Gujarat State Road Transport Corporation reported in 2001 (2) G.L.R. 1120, it has been held as under :

" In view of the Scheme of the Act under consideration and in view of the fact that our own Court itself has entertained such petitions

in large number of cases including the question as to whether writ petition should be entertained or not, this Court has held that the petitions are maintainable and they cannot be thrown on the objection of the order being revisable. The Court also finds that in such cases, the revision as such may not be equally efficacious and alternative remedy. One more consideration which prevails is that in such cases, when different orders are passed by the district Courts as an appellate authority under the provisions of the Act and in such cases if it is held that the revision lies under Section 115 of the C.P.C. merely because the order is passed by the appellate authority - Dist. Judge as a Court and not as a persona designata, it will over burden the Court with flood of civil litigations under Sec. 115 of the C.P.C. which will not be even otherwise conducive and expedient for the purpose of deciding such controversies by way of revision. In cases of this nature, when orders are passed by the appellate authority under the provisions of the Act, the writ petition before this Court cannot be thrown out on such grounds. The Constitutional remedy under Art. 226/227 is equitable and discretionary jurisdiction which may be invoked only in appropriate cases. The revision petition under Sec.. 115 of the C.P.C., does not lie in such cases i.e. cases of present nature arising under a special enactment (with finally given by the positive mandate of legislature) against the orders passed by the appellate authority - may be Dist.. Judge acting as a Court.

Assuming for the sake of argument that the revision lies, the Court finds that in such cases, revision cannot be said to be an efficacious, adequate and alternative remedy so as to throw out the petitions under Art. 226 and/or 227 of the Constitution of India by this Court. Not entertaining the petitions on the ground of availability of any alternative remedy is only a self-imposed discipline by the Court and the principles are well-settled in this regard that there is no constitutional impediment to entertain such petitions. Therefore, the Court does not feel inclined to throw away the petition in the facts of the present case on the ground of preliminary objection as has been raised by the applicant and this preliminary

objection fails."

Thus, on the basis of the aforesaid circumstances, the High Court has power under Article 227 to quash the orders passed by the tribunals if the findings of fact had been arrived at by non-consideration of the relevant and material documents. The learned counsel for the petitioner also relied on the following decisions :

(v) In the case of Achutananda Baidya V. Prafullya Kumar Grayen and others reported in AIR 1997 SUPREME COURT 2077, wherein it has been observed as under :

"If the evidence on record in respect of a question of fact is not at all taken into consideration and without reference to such evidence, the finding of fact is arrived at by inferior Court or Tribunal, such finding must be held to be perverse and lacking in factual basis. In such circumstances, in exercise of the jurisdiction under Article 227, the High Court will be competent to quash such perverse finding of fact.

Where the appellate authority under W.B. Restoration of Alienated Land Act, 1973 gave a finding that there was no oral agreement for reconveyance, without considering evidence on record, the High Court was justified in interfering with such finding of fact and setting it aside."

(vi) In the decision in the case of Industrial Credit and Investment Corporation of India Ltd. V. Grapco Industries Ltd. and others reported in 1999 (4) SCC 710, the Supreme Court has held as under :

"There was no bar on the High Court to itself examine the merits of the case in the exercise of its jurisdiction under Article 227 if the circumstances so require. The High Court can even interfere with interim orders of the courts and tribunals under Article 227 if the order is made without jurisdiction. But then a too technical approach is to be avoided. When the facts of the case brought before the High Court are such that the High Court can itself correct the error, then it should pass appropriate orders instead of merely setting aside the impugned

order of the Tribunal and leaving everything in a vacuum."

(vii) In the decision of the Hon'ble Supreme Court in the case of Shama Prashant Raje V. Ganpatrao and others, reported in 2000 (7) SCC 522, it has been held as under :

"In view of the rival submissions we have carefully scrutinised the orders of the Controller, that of the appellate authority under the Control Order and the order of the learned Single Judge which has been affirmed by the Division Bench. Undoubtedly, in a proceeding under Articles 226 and 227 of the Constitution of the High Court cannot sit in appeal over the findings recorded by a competent tribunal. The jurisdiction of the High Court, therefore, is supervisory and not appellate. Consequently Article 226 is not intended to enable the High Court to convert itself into a court of appeal and examine for itself the correctness of the decision impugned and decide what is the proper view to be taken or order to be made. But notwithstanding the same, on a mere perusal of the order of an inferior tribunal if the High Court comes to a conclusion that such tribunal has committed manifest error by misconstruing certain documents, or the High Court comes to the conclusion that on the materials it is not possible for a reasonable man to come to a conclusion arrived at by the inferior tribunal or the inferior tribunal has ignored to take into consideration certain relevant materials or has taken into consideration certain materials which are not admissible, then the High Court will be fully justified in interfering with the findings of the inferior tribunal. Then again the two questions on which the Tribunal under the Rent Control Order was required to give finding, namely, habitual defaulter and subletting are not pure questions of fact but can be held to be mixed questions of fact and law. In this view of the matter, on going through the appellate order passed by the District Collector as well as the order of the learned Single Judge, we are not in a position to hold that the High Court exceeded the parameters prescribed for interference with the findings of an inferior Tribunal."

(viii) In the case of Ouseph Mahai and others Versus M.

Abdul Kadir reported in 2002 (1) SCC 319, the Apex Court has held as under :

"Proceedings under Article 227, not being the extension of the proceedings under the Act would not automatically authorise the court to extend the time under the aforesaid proviso. However, it does not mean that in no case the High Court can extend the time. Exercise of such a power may be necessary if it is shown that grave injustice has been done to a party and the case was a fit case where the High Court should have exercised the extraordinary discretionary power in favour of the defaulting party."

Learned counsel for the petitioner pointed out the objects and the reasons for making amendment made in Section 115 of the Code of Civil Procedure. By Clause 45 of the Bill, Section 115 of the Code was proposed to be omitted. The question whether it is at all necessary to retain section 115 was carefully considered by the Committee. The Law Commission has expressed its view that in view of Article 227 of the Constitution, Section 115 of the Code is no longer necessary. The Committee, however feel that the remedy provided by Article 227 of the Constitution is likely to cause more delay and involve more expenditure. The remedy provided in Section 115 is on the other hand, cheap and easy. The Committee, therefore, feel that Section 115, which serves a useful purpose, need not be all together omitted particularly on the ground that an alternative remedy is available under Article 227 of the Constitution. The Committee, however, feel that in addition to the restrictions contained in Section 115 of the Civil Procedure Code, an over all restriction on the scope of application for revision against interlocutory orders should be imposed. Having regard to the recommendations made by the Law Commission in its 14th and 27th Reports, the Committee recommended that section 115 of the Code should be retained subject to the modification that no revision application shall lie against an interlocutory order, unless either of the following conditions is satisfied, namely, (i) if the orders were made in favour of the applicant, it would finally dispose of the suit or other proceeding, or (ii) That if the order, is allowed to stand, is likely to occasion a failure of justice or cause an irreparable injury.

Learned counsel for the respondent also pointed out that Clause (b) of Section 115 of the Code of Civil Procedure, has been deleted by the Act 46 of 1999,

wherein Clause (b) : "the order, if allowed to stand, would occasion a failure of justice or cause irreparable injury to the party against whom it was made" has been deleted by the Act 46 of 1999. The submission of the learned counsel for the petitioner is that the Legislature has wisdom that even after the omission of relevant provision u/s 115 of the CPC the High Court will have jurisdiction of superintendence ove lower judiciary under Article 227 of the Constitution to interfere with an interlocutory orders passed by the trial Court or lower appellate Court and/or confirmed or refused to confirm by lower appellate court in an exceptional case for keeping lower, within its limit and authority where the findings are perverse or not based on any material evidence or based on in admissible evidence or it has resulted in manifest and gross injustice.

5. On the contrary Mr. M.C. Bhatt learned counsel for the respondent - plaintiff raised preliminary objection that there is no scope for entertaining writ petition under Article 227 of the Constitution of India for challenging the order passed by the trial Court or the lower Appellate Court on the application exh. 5 for interim injunction particularly revisional powers of the High Court under Section 115 of the Civil Procedure Code have already been taken away by the legislature.

In this respect, learned counsel for the respondent relied upon the following decisions : (i) the decision of the Apex Court in the case of Mohd. Yunus V. Mohd. Mustaqim, reported in AIR 1984 SUPREME COURT 38, wherein it is held as under :

"A mere wrong decision without anything more is not enough to attract the jurisdiction of the High Court under Article 227.

The supervisory jurisdiction conferred on the High Courts under Article 227 of the Constitution is limited "to seeing that an inferior Court or Tribunal functions within the limits of its authority" and not to correct an error apparent on the face of the record merely less an error of law."

(ii) He has also relied on the decision of this Court rendered in Special Civil Application No.9324 of 2002 dated 19-9-2002.

"It is settled principle of law that finding of

facts recorded by the courts below cannot be assailed in a petition filed under Article 227 of the Constitution of India since the powers vested in Court under Article 227 of the Constitution of India is a supervisory jurisdiction. The High Court must confine itself to the correcting of error of jurisdiction committed by the courts below and it cannot assume suo motu jurisdiction of appellate court and correct every mistake assumed to have been committed by the courts below. It is a view of the decision making process and not the decision itself. The High Court cannot reappreciate preliminary or perceptive facts found by the fact finding authority under the statute. The aforesaid proposition of law is laid down by the Apex Court in the case of (i) Mohd. Yunus V. Mohd. Mustaqim & others, AIR 1984 SC 38, (ii) Khanna Improvement Trust V. Land Acquisition Tribunal and others (1995) 2 SCC 557 and (iii) H.B. Gandhi V. M/s. Gopinath (1992) Supp. 2 SCC 312 and (iv) State of Maharashtra V. Milind and Others, (2000)1 SCC 4.

It is also required to be noted that by virtue of the amended Act 1999 made in the Civil Procedure Code, proviso is added to Section 115 which in terms provide that; "the High Court shall not, under this Section, vary or reverse any order made, or any order deciding an issue, in the course of a suit or other proceeding, except where the order, if it had been made in favour of the party applying for revision, would have finally disposed of the suit or other proceedings" By virtue of the aforesaid provision, power vested under Section 115 of the Code of Civil Procedure is circumscribed, therefore, what cannot be granted under Section 115 can never be granted in a petition filed under Article 227 of the Constitution. When the legislature has already provided to put restriction upon the revisional jurisdiction envisaged under Section 115 of the Code of Civil Procedure. I am afraid that same exercise can be undertaken in exercise of power under Article 227 of the Constitution of India. It is well settled that the thing which cannot be allowed to be done directly, cannot be done indirectly."

(iii) He has also relied on the decision of this Court rendered in Special Civil Application No. 7786 of 2002

on 20-8-2002, wherein it is observed as under :

"Once there is a finding of fact the plaintiff was in possession of the suit land dispute of title would be irrelevant for interim injunction. this Court exercising power under Article 227 of the Constitution of India can not reappreciate the evidence produced on record and reach different conclusion. The said aspect is required to be considered with the amendment in the CPC that the Legislature intended to foreclose the remedy of revision under Section 115 of CPC. The things which can not be done directly can not be allowed to be done indirectly by the present petition. Even if the principles laid down in the aforesaid judgment of this Court or Apex Court are considered it cannot be said that any case is made out for interference under Article 227 of the Constitution of India."

(iv) This Court in Special Civil Application No. 9383 of 2002 decided on 24-09-2002, has held as under :

"Moreover, it is settled principle of law that finding of facts recorded by the courts below cannot be assailed in a petition filed under Article 227 of the Constitution of India since the powers vested in Court under Article 227 of the Constitution of India is a supervisory jurisdiction. The High Court must confine itself to the correcting of error of jurisdiction committed by the courts below and it cannot assume suo motu jurisdiction of appellate court and correct every mistake assumed to have been committed by the courts below. It is a view of the decision making process and not the decision itself. The High Court cannot reappreciate preliminary or perceptive facts found by the fact finding authority under the statute. The aforesaid proposition of law is laid down by the Apex Court in the case of (i) Mohd. Yunus V. Mohd. Mustaqim & others, AIR 1984 SC 38, (ii) Khanna Improvement Trust V. Land Acquisition Tribunal and others (1995) 2 SCC 557 and (iii) H.B. Gandhi V. M/s. Gopinath (1992) Supp. 2 SCC 312 and (iv) State of Maharashtra V. Milind and Others, (2000)1 SCC 4.

(v) The Supreme court in the case of Babhutmal Raichand Oswal V. Laxmibai R. Tarte and another,

reported in AIR 1975 SUPREME COURT 1297, the Apex Court has relied on the decision in the case of Nagendra Nath Bora V. The Commr. of Hills Division 1958 SCR 1240 = AIR 1958 SC 398) and has held as under :

"It is thus, clear that the powers of judicial interference under Art. 227 of the Constitution with orders of judicial or quasi-judicial nature, are not greater than the power under Art. 226 of the Constitution. Under Art. 226 the power of interference may extend to quashing an impugned order on the ground of a mistake apparent on the face of the record. But under Art. 227 of the Constitution, the power of interference is limited to seeing that the tribunal functions within the limits of its authority."

It would, therefore, be seen that the High Court cannot, while exercising jurisdiction under Art. 227, interfere with findings of fact recorded by the subordinate court or tribunal. Its function is limited to seeing that the subordinate court or tribunal functions within the limits of its authority. It cannot correct mere errors of fact by examining the evidence and reappreciating it. What, Morris. L.J., said in Rex V. Northumberland Compensation Appeal Tribunal (1952-1 All ER 122) in regard to the scope and ambit of certiorari must apply equally in relation to exercise of jurisdiction under Art. 227. That jurisdiction cannot be exercised. :

"As the cloak of an appeal in disguise. It does not lie in order to bring up an order or decision for rehearing of the issues raised in the proceedings."

If an error of fact, even though apparent on the face of the record, cannot be corrected by means of a writ of certiorari it should follow a fortiori that it is not subject to correct by the High Court in the exercise of its jurisdiction under Article 227. The power of superintendence under Article 227 cannot be invoked to correct an error of fact which only a superior court can do in exercise of its statutory power as a court of appeal. The High Court cannot in guise of exercising its jurisdiction Art. 227 convert itself into a court of appeal when the

> legislature has not conferred a right of appeal and made the decision of the subordinate court or tribunal final on facts.

Here, when we turn to the judgment of the High Court, we find that the High Court has clearly misconceived the scope and extent of its power under Art. 227 and overstepped the limits of its jurisdiction under that Article. It has proceeded to reappreciate the evidence for the purpose of correcting errors of fact supposed to have been committed by the District Court. That was clearly impermissible to the High Court in the exercise of its jurisdiction under Article 227."

6. I have considered the rival contention of the learned counsel for the points regarding the powers and jurisdiction of High Court under Article 227 of the Constitution and also considered the case law cited by them. I have also considered the latest decision of the Supreme Court, in the case of Ouseph Mathai and others V. M. Abdul Khadir, reported in 2002 (1) SCC 319, wherein it is held as under :

It is not denied that the powers conferred upon
> the High Court under Articles 226 and 227 of the Constitution are extraordinary and discretionary powers as distinguished from ordinary statutory powers. No doubt Article 227 confers a right of superintendence over all courts and tribunals throughout the territories in relation to which it exercises the jurisdiction but no corresponding right is conferred upon a litigant to invoke the jurisdiction under the said article as a matter or right. In fact power under this article casts a duty upon the High Court to keep the inferior courts and tribunals within the limits of their authority and that they do not cross the limits, ensuring the performance of duties by such courts and tribunals in accordance with law conferring powers within the ambit of the enactments creating such courts and tribunals. Only wrong decisions may not be a ground for the exercise of jurisdiction under this article unless the wrong is referable to grave dereliction of duty and flagrant abuse of power by the subordinate courts and tribunals resulting in grave injustice to any party.

In Waryam Singh V. Amarnath this Court held that
> power of superintendence conferred by Article 227

is to be exercised more sparingly and only in appropriate cases in order to keep the subordinate courts within the bounds of their authority and not for correcting mere errors. This position of law was reiterated in Nagendra Nath Bora V. Commr. of Hills Division & Appeals. In Babhutmal Raichand Oswal V.Laxmibai R. Tarte, this Court held that the High Court could not, in the guise of exercising its jurisdiction under Article 227 convert itself into court a court of appeal when the legislature has not conferred a right of appeal. After referring to the judgment of Lord Denning in R. V. Northumberland Compensation Appeal Tribunal, ex p Shaw (All ER at p.128) this Court in Chandavarkar Sita Ratna Rao V. Ashalata S. Guram held (SCC p.460, para 20)

It is true that in exercise of jurisdiction under Article 227 of the Constitution the High Court could go into the question of facts or look into the evidence if justice so requires it, if there is any misdirection in law or a view of fact taken in the teeth of preponderance of evidence. But the High Court should decline to exercise its jurisdiction under Articles 226 and 227 of the Constitution to look into the fact in the absence of clear and cut down reasons where the question depends upon the appreciation of evidence. The High Court also should not interfere with a finding within the jurisdiction of the inferior tribunal except where the findings are perverse and not based on any material evidence or it resulted in manifest injustice (see Trimbak Gangadhar Telang). Except to the limited extent indicated above, the High court has no jurisdiction. In our opinion, therefore, in the facts and circumstances of the case on the question that the High Court has sought to interfere, it is manifest that the High Court has gone into questions which depended upon appreciation of evidence and evidence and indeed the very fact that the learned trial Judge came to one conclusion and the Appellate Bench came to another conclusion is indication of the position that two views were possible in this case. In preferring one view to another of factual appreciation of evidence, the High Court transgressed its limits of jurisdiction under Article 227 of the Constitution. On the first point, therefore, the High Court was in error."

7. From the above decision of the Apex Court with the object and reasons for making amendment made in Section 115 of the Code of Civil Procedure taking away the revisional powers of the High Court it is clear that this Court can exercise the powers of superintendence over all lower courts and tribunals throughout its territory under Article 227 of the Constitution and can entertain the writ petition but that power and jurisdiction is circumscribed and has to be exercised more sparingly only appropriate cases in order to keep the subordinate courts within the bounds of their authority and not correcting mere errors. The High Court can enter into the question of facts or look evidence if it is required in the interest of justice, if there is misdirection in law or view of fact but the High Court should not interfere with finding of inferior tribunal except where the findings are perverse and not based on any material evidence or it has resulted in manifest injustice.

In the case of Ouseph Mathai and others V. M. Abdul Khadir, reported in 2002 (1) SCC 319, the Apex Court has accepted the decision of the Supreme Court in the case Waryam Singh V. Amarnath, reported in AIR 1954 SC 215, wherein it is held as under :

"The power of superintendence conferred by Art. 227 is to be exercised more sparingly and only in appropriate cases in order to keep the subordinate courts within the bounds of their authority and not for correcting mere errors."

However, the Supreme Court has also relied on other decisions and held that the High Court could not, in the guise of exercising its jurisdiction under Art. 227 convert itself into a court of appeal when the legislature has not conferred a right of appeal. The objects and the reasons of the Legislature for omitting powers of High Court u/s 115 of the C.P. C. and the decisions of the Apex Court as stated above, ultimately makes it abundantly clear that the High Court has ample power to exercise its jurisdiction under Art. 227 of the Constitution to sparingly and in appropriate cases that depends upon facts and circumstances of each case. Thus, it cannot be said at this stage that there is total bar and the High Court cannot exercise its jurisdiction under Art. 227 of the Constitution regarding the orders passed by the Trial Court or the appellate Court regarding interlocutory orders.

B. Whether the deed of conveyance would be effective or operative from the date of its registration or execution ?

The contention of the learned advocate for the petitioner is that the original land owners executed "banakhat" (agreement to sell) in favour of the plaintiff - society and it was registered vide registration no. 3889 on 2-3-1993. A notarized supplementary agreement for possession in favour of the plaintiff society was also executed on the same day i.e. 2-3-1993 and specific power of attorney and irrevocable power of attorney was executed by the defendants no. 1 to 5 in favour of one Jayantibhai C. Patel. On the same day the land owners also executed notarized indemnity bond and declaration. They also executed "sogandhnama" (affidavit) on the same day i.e. 2-3-1993 though it is alleged that they have executed separate five sale deeds in favour of the plaintiff society on 8-4-1999 which were presented in the office of the Sub-Registrar, Ahmedabad for registration on 17-7-1999 but the said sale deed were registered on 3-8-1999. The permission u/s 63 (C) of the Tenancy Act was given to the plaintiff society by the Collector, Ahmedabad on 24-7-1999. The sale deed or any instrument will be deemed to be in operation from the date of its registration u/s 47 of the Registration Act. When the said sale deeds were presented before the Sub-Registrar, Ahmedabad for registration, permission u/s 63 of the Tenancy Act was not obtained by the plaintiff society. As such, the said sale deeds executed in favour of the plaintiff society would not be operative from the date of execution. The trial Court has not considered the spirit and letter of the provisions of Section 47 of the Registration Act. The said sale deeds executed in favour of the plaintiff society would not be operative prior to the date on which the sale deeds were executed in favour of the defendant no. 6. The defendants no. 1, 3, 4 and 5 executed registered "banakhat" in favour of the defendant no. 6 on 26-12--1999. They also executed notarized power of attorney in favour of Amrutbhai Jaharabhai Bharwad on 26-12-1997. On the same day a notarized supplementary possession agreement was also executed in favour of the defendant no. 6. They also executed the sale deeds in favour of the defendant no. 6 through the power of attorney holder on 24-5-1999. As such, the sale deeds were registered in favour of the plaintiff society on 3-8-1999. Whereas the sale deeds executed in favour of the defendant no. 6 registered on 24-5-1999. Thus, the sale deeds executed by the defendants no. 1, 3, 4 and 5 in favour of the defendant

no. 6 were prior point of time to the registration of the sale deeds in favour of the plaintiff society on 3-8-1999. As per the provisions of Section 49 of the Registration Act, the sale deeds executed in favour of the defendant no. 6 prior to the sale deed executed in favour of the plaintiff society, u/s 47 of the Registration Act as such the sale deed executed in favour of the defendant no. 6 would be operative and the sale deeds executed in favour of the plaintiff society would not be operative.

8. On the contrary, the learned counsel for the respondent - plaintiff submitted that the registered "banakhat" was executed in favour of the petitioner on 2-3-1993 and on the same day supplementary agreement for possession was executed. As such, the possession of the land was given to the plaintiff on the same day. It is clearly revealed from the report of the Court Commissioner that there is construction of the plaintiff on the land in question. Though the sale deeds were executed on 8-4-1999 by the land owners in favour of the plaintiff society through the power of attorney holder Jayantibhai and those sale deeds were presented for registration in the office of the Sub-Registrar, Ahmedabad on 17-7-1999. At that time, the application for permission u/s 63 (C) of the Tenancy Act was pending before the Collector, Ahmedabad and that application for permission u/s 63 (C) of the Tenancy Act was granted to the plaintiff society by the District Collector, Ahmedabad on 24-7-1999. When the permission was granted by the District Collector, Ahmedabad on 24-7-1999 and the sale deeds executed by the land owners in favour of the plaintiff society were registered by the Sub-Registrar, Paldi, Ahmedabad on 3-8-1999. At the relevant time when the sale deeds were executed in favour of the plaintiff society by the land owners through the power of attorney holder, the permission u/s 63 (C) of the Tenancy Act was not obtained from the Collector concerned and hence the registration of the said sale deeds could not be done and the registration was made on 3-8-1999. It is also contended that the documents or instruments of conveyance will be operative from the date of execution if they are registered under the provisions of the Registration Act subsequently and they will be treated as valid instruments even though they were invalid at the time of their execution. In support of his arguments, he has relied on the decision of this Court in the case of Mavjibhai Dharshibhai & Ors. V. State of Gujarat & Ors, reported in 1994 (2) G.L.R. 1168, wherein it is held as under :

"Ordinarily, I would have accepted the aforesaid submission canvassed by Shri D.N. Patel for the contesting respondents to the effect that there is practically no difference between the two terms "invalid" and "void" in the light of the aforesaid ruling of the Nagpur High Court in the case of Mohammad Ibrahim Khan Ikramkhan (supra). The scheme of the Act, however, makes a clear distinction between void transactions on the one hand and invalid transaction on the other. It is not open to me to say that the Legislature did not understand the distinction between the two terms "void" and "invalid". In fact, as transpiring from the various provisions of the Act, the Legislature was fully aware of the distinction between the two aforesaid terms. In Section 17 (5) of the Act it has been provided, "Any sale of a site held in contravention of this Section (that is, Sec. 17 thereof) shall be null and void." As against this, section 64 (8) has provided "any sale made in contravention of this section (that is Sec. 64 thereof) shall be invalid." The language of Sec. 63 thereof also makes it clear that the transaction in contravention thereof would be invalid and not void.

13. The material provision, however, occurs in Sec. 83A of the Act, It reads :

"(1) No person shall acquire land by transfer where such transfer or acquisition is invalid under any of the provisions of this Act. 2) Any person who acquires land in contravention of sub-sec. (1) shall, in the event of the transfer or acquisition being decided or declared invalid, be liable to suffer, the consequences under Sec. 84 or 84-C as the case may be."

It becomes crystal clear from the language of the aforesaid statutory provision that any invalid transaction will have to be decided or declared invalid. It would thus mean that an invalid transaction per se may be invalid but it will not be invalid unless it is decided or declared to be so. It has to be invalidated. It thus becomes clear that an invalid transaction is made equivalent to a voidable transaction and not a void transaction. It is a trite principle of law to say that a voidable transaction remains valid till it is a void, annulled or invalidated.

Even at the cost of repetition, I reiterate that the language of Sec. 83A of the Act has linked an invalid transaction to a voidable transaction.

He has also relied on the decision of the Calcutta High Court in the case of State of West Bengal V. Nimai Chand Kundu reported in AIR 1978 Calcutta 347, wherein it is observed as under :

"The ratio of the decisions cited above indicates the following propositions of law though with reference to particular cases.

(i) provision of S. 47 of the Registration Act will apply where the successive transfers relate to the same property and there is no contest against any third party.

(ii) When the right of pre-emption as in Muslim law or under S. 26-F of the Bengal Tenancy Act, arises only out of a valid, complete and bona fide sale, provisions of S. 61 and not S.47, will be attracted. The registration of the document, which is essential to complete a valid sale, will be complete when on presentation for registration of the document and admission of execution thereof, the formalities enjoined under Secs.. 59, 60, and 61 (1) are complied with.

(iii) In cases where after the date of execution of a document of transfer but before its registration, there are subsequent deeds of transfer in respect of the same property, such documents even if registered earlier than the transfer deed referred to above, will not prevail over such earlier deed which takes effect from its execution.

(iv) Similarly on the execution of a transfer deed in respect of a property but before its registration, there is an attachment of the same property, and the transfer deed is subsequently registered attachment will not prevail over the said deed which also takes effect from its execution.

(v) A deed of gift duly executed and accepted by the donee cannot be revoked by the donor in absence of registration during the permissible period does not suspend the gift."

Learned counsel for the respondent has relied on the decision of the Madras High Court reported in Thirumagaral Mudaliar V. Muruga Pillai reported in AIR 1960 Madras 55, wherein it is held as under "

"In these circumstances, the learned District Munsif came to the correct conclusion following the observations in Iswarayya V. Kurubasubbanna, 67 Mad LJ 380 : (AIR 1934 Mad 637 :

"No doubt, under S. 47 of the Registration Act once a document is registered the effect begins to commence from the date of execution. But if the document is not registered it can never have any legal effect as a sale deed."

9. In the present case, permission u/s 63 (C) of the Tenancy Act was granted to the plaintiff society on 24-7-1999 by the District Collector, Ahmedabad though the sale deeds were executed on 8-4-1999. Though the said sale deeds were registered under the provisions of the Registration Act by the Sub-Registrar, Ahmedabad on 3-8-1999, those sale deeds will start to operate from the date of their execution i.e. 8-4-1999. Execution of the documents made in favour of the plaintiff society was made prior to the execution of the document made in favour of the defendant no. 6 by the land owners. As such, the effect of the sale deeds executed in favour of the plaintiff society will start from their execution i.e from 8-4-1999, prior to the date on which the sale deeds were executed in favour of the defendant no. 6.

10. In connection with the execution of the sale deeds made in favour of the plaintiff society by the land owners through the power of attorney holder Jayantibhai C. Patel. Learned counsel for the petitioner contended that the defendant no. 2 has died when the sale deeds were executed and therefore the sale deeds executed by the defendants no. 1 to 5 through the power of attorney holder are illegal at least execution on behalf of the

defendant no.2 who had died and execution of the sale deeds on behalf of the defendant no. 2 made in favour of the plaintiff society is not acceptable, and cannot be deemed to be legal and valid as at the relevant time the defendant no. 2 was not alive for execution of the sale deeds and heirs and legal representatives of deceased defendant no. 2 have not consented at all for execution of the sale deeds on behalf of the defendant no. 2 and hence the sale deeds executed on behalf of the defendant no. 2 in absence of consent of the heirs and legal representative of the defendant no. 2 are illegal and are not sustainable in the eye of law and in view of Section 201 of the Contract Act the power of attorney has come to an end and sought terminated at least in respect of the defendant no. 2. In this connection, leaned counsel for the respondent - plaintiff society has pointed out that the irrevocable power of attorney has already been executed by the five land owners i.e. defendants no. 1 to 5 on 2-3-1993. They have also parted with their power in favour of the power of attorney holder Jayantibhai C. Patel. As such, once the defendant no. 2 had no power, there would be no requirement of consent of the heirs and legal representatives of the defendant no. 2 for execution of the sale deeds by the power of attorney holder in favour of the plaintiff society. Considering the facts and circumstances of the case and material on record I am of the view that the defendant no. 2 though died there was no need for the power of attorney holder to obtain the consent from the heirs and legal representative of the defendant no. 2 as the presence or absence of the defendant no. 2 makes no difference in view of the fact that the defendant no. 2 had already parted his power for execution of the sale deed in favour of the power of attorney holder. As such, there is substance in the contention of the learned counsel for the petitioner.

11. It is contended by the learned counsel for the petitioner that the deeds of conveyance were executed by Jayantibhai C. Patel power of attorney holder of the defendants no. 1 to 5 on 8-4-1999 in respect of the land which cannot be transferred without the permission of the Collector concerned u/s 63 (C) of the Tenancy Act, as the Tenancy Act requires that any instrument or deed of conveyance transferring the agricultural land to a non-agriculturist will be invalid. As such, at the time when the sale deeds were executed no permission was obtained by the plaintiff society from the Collector concerned u/s 63 of the Tenancy Act. As such, the sale deeds were illegal and are not acceptable in the eye of law. I find no substance in the contention of the leaned

counsel for the petitioner. This Court in the case of Mavjibhai Dharsibhai & Ors. Vs. State of Gujarat & Ors, reported in 1994 (2) G.L.R. 1168, held that from statutory provisions it appears that in valid transaction will have to be decided or declared invalid. It would thus mean that an invalid transaction per se may be invalid but it will not be invalid unless it is decided or declared either by the court of law or by any competent authority mere, invalid transaction would not be invalid per se as held by this Court in the case of Mavjibhai Dharshibhai (Supra) as stated above.

12. As invalid deeds of conveyance were not declared by any court of law or by any competent authority, they will be treated as valid more so the permission has been granted by the Collector concerned u/s 63 of the Tenancy Act for transfer of the property to a person who was not an agriculturist i.e. the plaintiff society. From the facts and circumstances of this case, in my view the sale deeds executed in favour of the plaintiff society by Jayantibhai C. Patel power of attorney holder on behalf of the original land owners - i.e. defendants no .1 to 5 will operate from the date of execution of the sale deeds and not from the date of registration and invalidity of sale transaction due to absence of permission u/s 63 of the Tenancy Act would not come in the way as the permission u/s 63 of the Tenancy Act has already been granted by the Collector prior to the Registration of the Sale Deeds in favour of the plaintiff..

V. Principles for Interlocutory orders :

The contention of the learned counsel for the petitioner is that prima facie the Court has to come to a conclusion as to which of the parties has chance of winning. In the present case, the sale deeds were executed in favour of the defendant no. 6 by the land owners through the power of attorney holder prior to execution of the sale deeds in favour of the plaintiff society. If it is considered that the sale deeds executed in favour of the plaintiff society are antedated, even if it is assumed that the sale deeds executed in favour of the plaintiff society prior to execution of the sale deeds in favour of the defendant no. 6 but the sale deeds executed in favour of the defendant no. 6 was prior in time to the registration of the sale deeds executed in favour of the plaintiff society. It cannot be said at this stage that the defendants

have no prima facie cases. In case the petitioner is allowed to use the land in dispute, the nature of the suit property will be altered or changed or it can be passed on to third party by transfer. Even the claim of the respondents would not be operative at all. In this connection, he has relied on the observations made by the trial Court, which read as under :

"At this stage, this Court has to dispose of the injunction application alone and since the subject matter of the injunction application of the defendants at exh. 51 and the suit of the plaintiff is one and the same and therefore, this decision on the basis of the evidence is likely to consume time. In the meantime, if the suits filed by the defendants are decided in favour of the defendants and if in the meantime nature of the suit property is altered or change, constructed or transferred to the third party, then, there would not be any purpose of filing of the suits by the defendants and all the parties would be dragged into litigations and, therefore, in the interest of justice and from the view point of law, it would be just and proper to direct all the parties to maintain status quo in respect of the suit property existing at this juncture."

Minor defendants no. 7. 8 and 9 have filed suit being Regular Civil Suit No. 472 of 1999 in the Court of Civil Judge (SD), Ahmedabad (Rural) against the defendants no. 1, 3 to 5 and defendant no. 6 for declaration that the sale deeds executed on 24-5-1999 in favour of the defendant no. 6 are illegal and null and void. The defendants no. 1, 3 to 5, 7, 8 and 9 have filed Civil Suit No. 314 of 2000 in the Court of Civil Judge (SD), Ahmedabad (Rural) against the defendant no. 6 for declaration that the registered sale deed dated 24-5-1999 in favour of the respondent no. 6 registered vide registration no. 1494 is illegal, bad in law and null and void. The defendants no. 1, 3 to 5 and the defendants no. 7, 8 and 9 have also filed Civil Suit NO. 31 of 2001 in the Court of Civil Judge (JD), Ahmedabad (Rural) against plaintiff, Jayantibhai for a declaration that five sale deeds executed on 8-4-1999 and presented for registration on 17-7-1999 and registered on 3-8-1999 are illegal, null and void. The trial

Court passed first order on 23-11-2001 directing all the parties to the suit to maintain status-quo in respect of the suit land. The plaintiff acted in breach of the said order by putting construction on the land in dispute. Hence, the defendant no. 6 preferred an application exh. 19 in Civil Misc. Appeal No. 95 of 2001 before the lower Appellate Court with a prayer to send the records and proceedings of the suit to the trial Court to enable him to file an application for breach of the aforesaid injunction order. The lower appellate Court vide order dated 5-7-2002 rejected that application of the defendant no. 6.

13. Learned counsel for the petitioner has relied on the decision of the Supreme Court in the case of Wander Ltd. and Another V. Antox India P. Ltd., reported in 1990 (Supp) SCC 726, wherein it has been held as under :

"Usually, the prayer for grant of an interlocutory injunction is at a stage when the existence of the legal right asserted by the plaintiff and its alleged violation are both contested and uncertain and remain uncertain till they are established at the trial on evidence. The court, at this stage, acts on certain well settled principles of administration of this form of interlocutory remedy which is both temporary and discretionary. The interlocutory remedy is intended to preserve in status quo, the rights of parties which may appear on a prima facie case. The Court also, in restraining a defendant from exercising what he considers his legal right but what the plaintiff would like to be prevented, puts into the scales, as a relevant consideration whether the defendant has yet to commence his enterprise or whether he has already been doing so in which latter case considerations is some what different from those that apply to a case where the defendant is yet to commence his enterprise, are attracted.

The appellate Court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal

against exercise of discretion is said to be an appeal on principle. Appellate court will not reassess the material and seek to reach a conclusion different from the one reached by the court below solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the trial court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion."

14. Relying upon the aforesaid decision of the Supreme Court, the learned counsel for the petitioner contended that the lower appellate court has committed manifest error in disturbing the order of status-quo passed by the trial court without giving any substantial finding by quashing and setting aside the finding of the trial court. He has also contended that the defendants no. 1, 3, 4 and 5 - land owners have denied their signatures and thumb marks on the documents executed in favour of the plaintiff society and also on the documents executed in favour of the respondent no. 6. I have also considered this contention of the learned counsel for the petitioner and the principles in respect of the points above noted for grant of interlocutory order in favour of the plaintiff society, the Court has to see prima facie case in favour of the plaintiff, balance of convenience and irreparable loss likely to cause to the plaintiff, in case the interlocutory order is not passed.

15. I have considered the contentions of the learned counsel for the parties and also considered the decision of the Supreme Court in the case of Colgate Palmolive (India) Ltd. V. Hindustan Lever Ltd. reported in 1999 (7) SCC 1, wherein the Supreme Court has laid down the guidelines in respect of grant of interlocutory orders, which read as under :

"Following are certain specific considerations in the matter of grant of intrerlocutory injunction, the basic being non-expression of opinion as to the merits of the matter by the court, since the issue of grant of injunction, usually, is at the earliest possible stage so far as the time frame is concerned. The other consideration which ought to weigh with the court hearing the application or petition for grant of injunctions are as below :

(i) extent of damages being an adequate remedy;

(ii) protect the plaintiffs interest for violation of his rights though, however, having regard to the injury that may be suffered by the defendants by reason therefor;

(iii) the court while dealing with the matter ought not to ignore the factum of strength of one party's case being stronger than the other's;

(iv) no fixed rules or notions ought to be had in the matter of grant of injunction but on the facts and circumstances of each case - the relief being kept flexible;

(v) the issue is to be looked at from the point of view as to whether on refusal of the injunction the plaintiff would suffer irreparable loss and injury keeping in view the strength of the parties' case;

(vi) balance of convenience or inconvenience ought to be considered as an important requirement even if there is a serious question or prima facie case in support of the grant;

(vii) whether the grant or refusal of injunction will adversely affect the interest of the general public which can or cannot be compensated otherwise.

At the interlocutory stage the Commission/Court is not really concerned with the factum of establishment of any truth or falsity but mere a prima facie case or an arguable case resulting in establishment of a prima facie case. It is on this backdrop that exercise of discretion by the Commission shall have to be considered."

16. The lower appellate court has considered the contentions of the learned counsel for the parties and the findings recorded by the trial court and came to the conclusion that the trial court has recorded the finding regarding prima facie case, balance of convenience and

irreparable loss in favour of the plaintiff. The lower court has arrived at the conclusion which reads as under:

> "Looking to the over all discussion, the plaintiff has prima facie case and balance of convenience and irreparable loss is also in favour of the appellant of MCA No. 96/01/plaintiff. This finding was held by the trial Judge. Even then the plaintiff was restrained by the subsequent order to maintain status-quo by all the parties which is error of the trial court. The defendants no. 1 and 3 to 5 have not challenged the order passed below exh. 51 of RCS No. 513/99. Under these circumstances, when the learned trial Judge exercised the discretion in granting status-quo by all the parties is error in fact and law. Therefore, the point no. 1 is answered accordingly in affirmative in MCA No. 96/01 and in negative in MCA No.95/01."

17. Mr. Mihir Thakor, learned counsel for the respondent contended that the agreement to sell (banakhat) was registered on 2-3-1993. But on the same day notarized supplementary agreement for possession was also executed in favour of the plaintiff society. The land owners - defendants no. 1 to 5 were paid full consideration of Rs.7,84,040/- by A/c Payee cheque and except Rs. Rs.30,000/- which was paid in cash and the said cheque was cleared. Thus, the land owners have already received the amount of entire consideration on the date on which the agreement to sell was executed. Irrevocable power of attorney was also executed by the defendants no. 1 to 5 in favour of one Jayantibhai C. Patel on the same day i.e. 2-3-1993. Notarized supplementary agreement for possession was also executed in favour of the plaintiff society on the same day i.e. 2-3-1993, whereby the possession of the land in question was handed over to the plaintiff society. After Reappeal of the Ceiling Act on 30-3-1999, the power of attorney holder Jayantibhai C. Patel executed five separate sale deeds in favour of the plaintiff society on 8-4-1999. The said sale deeds were presented for registration in the office of the Sub-Registrar, Paldi, Ahmedabad on 17-7-1999 as at that time the permission u/s 63 (C) of the Tenancy Act was not given to the plaintiff society by the District Collector concerned. That permission u/s 63 (C) of the Tenancy Act was given to the plaintiff society by the District Collector on 24-7-1999, then five sale deeds were registered by the Sub-Registrar, Ahmedabad on 3-8-1999. On or before that date no land owner nor any

other person could disturb the possession of the plaintiff society. After obtaining permission u/s 63 (C) of the Tenancy Act, those sale deeds were executed on behalf of the defendants no. 1 to 5 and that application for permission u/s 63 (C) was moved on 20-3-1999 and the same was allowed in favour of the plaintiff society on 24-7-1999.

18. I am in agreement with the contention of the learned counsel Mr. Mihir Thakor for the respondent

that the agency would not be terminated u/s 202 of the Contract Act even after death of the person who has authorized, where there is no express contract for termination, relied upon the decision of Division Bench of this Court in the case of Her Highness Shantadevi Pratapsinh Rao Gaekwad V. Savjibhai H. Patel reported in 1998 (2) G.L.R. 1521, wherein it is held as under :

> "No doubt, in the case of Garapati Venkanna (supra), the Madras High Court had held that, where a power of attorney has been executed by several principals in favour of a person and one of the principals having distinguished interest in subject-matter of power of attorney dies, the death terminates the power of attorney. This view was taken by the Madras High Court because, the Court found that there was no authority coupled with an interest and, therefor, the argument raised on the basis of Sec. 202 of the Contract Act could not prevail. Here is a case in which we have already held as above that it was a case of an agency coupled with interest. In our opinion, the position of law with reference to Sec. 202 of the Contract Act is, therefore, very clear that the cases in which the agency is coupled with interest and there is no express contract for termination, there cannot be any termination even by death and, therefore, the factum of death of the principal during the pendency of the suit cannot lead to the termination of the agency. The necessary ingredients required under Sec. 202 of the Contract Act so as to hold that the agency could not be terminated in the facts of the present case are, therefore, clearly established and we also find that even the factum of death of the principal cannot bring about the termination of the agency."

19. Regarding the contention of the learned counsel

for the petitioner that the signatures and thumb marks, they have not been identified by the notary on the documents. It was pointed by the learned counsel for the respondent that firstly it is not required that the documents should be notarized under the law. Secondly, the signatures and thumb marks have been identified by one Pravinbhai who was personally known to the Notary and said Pravinbhai has filed his affidavit in the trial Court to that effect. As such, it cannot be said that executants' signatures and thumb marks have not been identified by the notary or the person known to the notary, on the basis of the material on record and the findings recorded by the courts below.

20. In the facts and circumstances of this case, I am constrained to hold that the land in question since execution of the agreement to sell (banakhat) and subsequently sale deeds were executed and were got registered the plaintiff was in possession, they will be deemed to be operative from the date of their execution. Though prior to permission u/s 63 (C) of the Tenancy Act the transfer of land made in favour of plaintiff society was not invalid as it was not declared as illegal or invalid by the court of law or by any competent authority. Since the sale deeds have already been registered, the said sale deeds will be deemed to be operative from the date of their execution. As such, there was prima facie case regarding title, right and interest in favour of the plaintiff society and balance of convenience and irreparable loss as held by the trial court as well as by the lower appellate court is also in favour of the plaintiff society. The respondent plaintiff society is in possession with legal title and right and has prima facie case on the basis of the legal documents and they are in possession of the land in question and other two ingredients are also in favour of the plaintiff society, the lower appellate court has not committed any error more particularly the plaintiff society has paid full consideration in the year 1993 to the defendants no 1 to 5, the power of attorney holder cannot be said to be illegal by any manner by whom the sale deeds were executed in favour of the plaintiff society. Even pendency of the suits filed by some defendants challenging the sale deeds executed in favour of the defendant no. 6 and the plaintiff, and denial of the signatures and thumb marks on the documents would not effect the interim order granted by the lower appellate court in favour of the plaintiff society on the basis of the principles for granting interim orders.

21. In the facts and circumstances of this case, I do

find that this is not a case sparingly calling for interference by this Court more particularly the findings recorded by the lower appellate court do not appear to be unreasonable or perverse. Therefore, both the petitions are devoid of any merits. Accordingly, both these petitions are dismissed. However, the observations made by lower appellate court in the impugned judgment and observations of this Court in this judgment and order will not prejudice to the rights and contentions of the parties concerned in the proceedings of the suits pending before the trial Court. In both the petitions Rule discharged, with no order as to costs.

(Kundan Singh, J.)
/JVSatwara/

In the last, learned counsel for Aspi M. Kapadia for the petitioner submitted that learned Assistant Judge, Ahmedabad (Rural) has granted status-quo till 31-1-2003 and that stutus-quo may be continued for further period of four weeks to enable the petitioner to approach the higher forum.

In the facts and circumstances of this case, I do not find any good reason to accede the request of the learned counsel for the petitioner. Accordingly, the request made by the learned counsel Mr. Kapadia for the petitioner is refused.

(Kundan Singh, J.)